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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9691]

RIN 1545-BL24

Debt That Is a Position in Personal Property That Is Part of a Straddle

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to the application of the straddle rules to a debt instrument. The final regulations clarify that a taxpayer's obligation under a debt instrument can be a position in personal property that is part of a straddle. The final regulations primarily affect taxpayers that issue debt instruments that provide for one or more payments that reference the value of personal property or a position in personal property.

DATES: Effective Date: These regulations are effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Applicability Dates: For dates of applicability, see §1.1092(d)-1(e).

FOR FURTHER INFORMATION CONTACT: Mary Brewer, (202) 317-6895 (not a toll-free number).

## SUPPLEMENTARY INFORMATION:

**BACKGROUND AND EXPLANATION OF PROVISIONS**1. Summary of Prior Notices of Proposed Rule Making and Temporary Regulations

This document contains amendments to 26 CFR Part 1. On January 18, 2001, a notice of proposed rulemaking (REG-105801-00) (the 2001 NPRM) was published in the **Federal Register** (66 FR 4746). The 2001 NPRM broadly addressed the application of the straddle rules and section 263(g), and it included proposed regulation §1.1092(d)-1(d) to clarify the circumstances under which an issuer's position under a debt instrument is treated as a position in personal property that is part of a straddle under section 1092 of the Internal Revenue Code. No public hearing was requested or held. Written and electronic comments responding to the 2001 NPRM were received, and the only commenter that substantively addressed proposed §1.1092(d)-1(d) urged its adoption.

On September 5, 2013, temporary and final regulations (TD 9635) were published in the **Federal Register** (78 FR 54568). In §1.1092(d)-1T(d), the temporary regulations adopted the text of proposed §1.1092(d)-1(d), as published in the 2001 NPRM. As had been proposed in the 2001 NPRM, to make room for a substantive paragraph (d), the 2013 final regulations redesignated as paragraph (e)(1) the section's effective/applicability date provisions, which had formerly been designated as §1.1092(d)-1(d). The temporary regulations added a new paragraph (e)(2) containing the applicability date that had been proposed in the 2001 NPRM. A notice of proposed rulemaking (REG-111753-12) (the 2013 NPRM) cross-referencing the temporary regulations was published in the same issue of the **Federal Register** (78 FR 54598).

No public hearing was requested or held. No written or electronic comments responding to the notice of proposed rulemaking were received.

This Treasury decision adopts the provisions in the 2013 NPRM without substantive change. In addition, this Treasury decision amends the effective/applicability date provisions in §1.1092(d)-1(e) to provide explicitly the dates for those portions of §1.1092(d)-1 that were added by a 1993 Treasury decision (TD 8491) as discussed further in section 3 of this preamble.

The corresponding temporary regulations are removed. The remainder of the 2001 NPRM remains proposed.

## 2. Overview of the Final Regulations

The final regulations provide guidance under section 1092 regarding the circumstances in which an issuer's obligation under a debt instrument may be a position in actively traded personal property and, therefore, part of a straddle.

Section 1092(d)(1) defines "personal property" to mean "personal property of a type that is actively traded." A debt or obligation generally is not property of the debtor or obligor. Nevertheless, if a debt instrument provides for payments that are (or are reasonably expected to be) linked to the value of personal property as so defined, then the obligor on the instrument has a position in the personal property referenced by the debt instrument. Therefore, as was proposed in the 2013 NPRM, §1.1092(d)-1(d) of the final regulations expressly provides that an obligation under a debt instrument may be a position in personal property that is part of a straddle.

### 3. Dates of Applicability of the Regulations

The final regulations adopt the effective/applicability date set forth in the 2013 NPRM by providing that §1.1092(d)-1(d) applies to straddles established on or after January 17, 2001 (the date on which the 2001 NPRM was filed with the **Federal Register**). No inference is intended with respect to straddles established prior to January 17, 2001. In appropriate cases, the IRS may take the position under section 1092(d)(2) that an obligation under a debt instrument was part of a straddle prior to the effective/applicability date of §1.1092(d)-1(d) if the debt instrument functioned economically as an interest in actively traded personal property.

In addition, the final regulations clarify the effective-date paragraph (§1.1092(d)-1(e)) to reflect the applicability of provisions in §1.1092(d)-1 that were originally proposed in 1991 and adopted in 1993. On July 10, 1991, a notice of proposed rulemaking (FI-16-89) (the 1991 NPRM) was published in the **Federal Register** (56 FR 31350). The 1991 NPRM primarily addressed accounting for notional principal contracts but also proposed a new §1.1092(d)-1, regarding the definition of actively traded personal property for purposes of the straddle rules. Proposed §1.1092(d)-1(a) clarified the definition of actively traded personal property, and proposed §1.1092(d)-1(b) enumerated several categories of established financial markets. See 56 FR 31353. The preamble also stated, “Proposed regulation section 1.1092(d)-1 is proposed to be effective for notional principal contracts entered into on or after July 8, 1991.” See 56 FR 31350. (July 8, 1991, was the date on which the 1991 NPRM was filed with the **Federal Register**.)

However, the text of the 1991 proposed regulations contained an effective date only in paragraph (c), which was the portion of the proposed regulations that focused on which notional principal contracts would be treated as actively traded personal property. See proposed §1.1092(d)-1(c)(2) (“(2) Effective date. This paragraph (c) applies to notional principal contracts entered into on or after July 8, 1991.”).

Final regulations (TD 8491) (the 1993 Treasury decision), which issued §1.1092(d)-1, were published in the **Federal Register** on October 14, 1993 (58 FR 53125). The 1993 Treasury decision moved the effective date for paragraph (c) to a new paragraph (d), and added an October 14, 1993, effective date for new paragraph (b)(1)(vii). The 1993 Treasury decision, however, like the 1991 NPRM, did not contain explicit effective dates for paragraph (a) or for the portion of paragraph (b) that had appeared in the 1991 NPRM.

Accordingly, these final regulations revise §1.1092(d)-1(e) to include explicit effective/applicability-date provisions for all paragraphs of §1.1092(d)-1.

### **Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the proposed regulations preceding these final regulations were submitted to the Chief

Counsel for Advocacy of the Small Business Administration for comment on their impact on small business. No comments were received.

### **Drafting Information**

The principal author of these regulations is Mary Brewer, Office of Associate Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and Treasury Department participated in their development.

### **List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

### **Adoption of Amendments to the Regulations**

Accordingly, 26 CFR Part 1 is amended as follows:

### **PART 1--INCOME TAXES**

Paragraph 1. The authority citation for part 1 is amended by removing the entry for §1.1092(d)-1T and by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Section 1.1092(d)-1 also issued under 26 U.S.C. 1092(b)(1). \* \* \*

Par. 2. Section 1.1092(d)-1 is amended by revising paragraphs (d) and (e) to read as follows:

§1.1092(d)-1 Definitions and special rules.

\* \* \* \* \*

(d) Debt instrument linked to the value of personal property. If a taxpayer is the obligor under a debt instrument one or more payments on which are linked to the value of personal property or a position with respect to personal property, then the taxpayer's

obligation under the debt instrument is a position with respect to personal property and may be part of a straddle.

(e) Effective/applicability dates--(1) Paragraphs (a) and (b) of this section apply to positions entered into on or after October 14, 1993.

(2) Paragraph (c) of this section applies to positions entered into on or after July 8, 1991.

(3) Paragraph (d) of this section applies to straddles established on or after January 17, 2001.

**§1.1092(d)-1T [Removed]**

Par. 3. Section 1.1092(d)-1T is removed.

John Dalrymple  
Deputy Commissioner for Services and Enforcement.

Approved: July 24, 2014

Mark J. Mazur  
Assistant Secretary of the Treasury (Tax Policy).

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